THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.22449 and 22610 OF 2005

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02.11.2005

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Between:

M/s.Modern Service Station, Rep. by Proprietor

Sri Srigopal Bung, S/o. Srinivas Bung, Hyderabad.

… Petitioner.

AND

1. The Government of Andhra Pradesh, Rep. by its

Principal Secretary, Revenue Department, Hyderabad.

And others

… Respondents.

COMMON ORDER:

The petitioner in W.P.No.22449 of 2005 is the proprietor of M/s.Modern Service Station, which is the petitioner in W.P.No.22610 of 2005. In both the writ petitions, notification dated 20.08.2005 issued by the third respondent under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity) as well as the notice of Award dated 01.10.2005 issued by the second respondent are assailed as illegal, violative of provisions of the Act and unconstitutional. At the stage of admission itself, the second respondent- Land Acquisition Officer (LAO); filed counter affidavit and the matter was heard at length. This order shall dispose of both the writ petitions.

In brief, the fact of the matter as can be culled out from the pleadings is as follows. The petitioner in the first writ petition claims to be the owner of land admeasuring Acs.1.00 in Survey No.37 of Thondupally village, Shamshabad Mandal. He leased out the land to M/s.Modern Service Station, dealer of Bharat Petroleum Corporation Limited, petitioner in the second writ petition, for running a petrol/diesel depot and the latter developed the land in 1989 and constructed building, established petrol/ diesel pump and doing business since 1990. The Government of Andhra Pradesh

proposed to construct Outer Ring Road (ORR) and accordingly the third respondent issued the notification under Section 4(1) of the Act proposing to acquire an extent of 9 ½ guntas of land in Survey No.37 belonging to the petitioner in the first writ petition. The enquiry under Section 5-A of the Act was dispensed with in exercise of powers under Section 17(4) of the Act. The notification under Section 4(1) of the Act, which was followed by a declaration under Section 6(1) of the Act, was published in A.P.Gazette on 22.08.2005 showing that land admeasuring 9 ½ guntas in survey No.37 along with compound wall and four neem trees, along with other extents of lands are needed for formation of ORR. After issuing notification and declaration, the Mandal Revenue Officer served notices on the petitioner on 30.08.2005 and 05.09.2005 along with copies of Gazette notification dated 22.08.2005 and the petitioner was informed about the public notice in Deccan Chronicle dated 26.08.2005 and 05.09.2005. On 08.09.2005, after receiving notice under Section 9(3) and Section 10 of the Act in Form No.7, petitioner filed objections, *inter alia*, informing that though as per the notification only 9 ½ guntas of land is proposed to be acquired, that the respondents marked the entire Acs.1.00 of land occupied by the Petrol pump and that the total extent of land in Survey No.37 is Ac.4.30 guntas out of which the petitioner is owner of Acs.1.00 and the balance of land belongs to Amita Heda. The second respondent assured that he will get the land resurveyed. The award enquiry was scheduled on 17.09.2005. The same being a public holiday, no hearing/enquiry took place. It is alleged by the petitioners that no notice of award enquiry was given to the petitioners after postponement of enquiry on 17.09.2005 and that there was no proper delineation of the property proposed for acquisition. Therefore, they contend that the entire proceedings are vitiated by illegality and contravention of the provisions of the Act.

On 26.09.2005, the LAO addressed letter to the Territory Manager of Bharat Petroleum Corporation Limited, Hyderabad informing that as per the notification for acquisition for ORR,
9 ½ guntas of land of Petrol pump is proposed and that on the spot there is a Petrol pump M/s.Modern Service Station effected by ORR alignment in the right of the way. The Territory Manager was therefore requested to issue NOC for shifting the Petrol pump and enable the LAO to take possession of land. The Petrol pump represented by its Proprietor, therefore, filed second writ petition challenging the notification under Section 4(1) of the Act as well as the award dated 01.10.2005, *inter alia,* contending that the respondents having notified only 9 ½ guntas of land, cannot take possession of the entire extent of 4,840 square yards (Acs.1.00) of land.

The second respondent in both the writ petitions filed two separate counters. In the counter affidavit dated 18.10.2005 filed in W.P.No.22449 of 2005, it is stated that the procedure under the Act has been strictly followed and award has been passed in accordance with law. A categorical statement is made in the counter affidavit that only an extent of 9 ½ guntas in Survey No.37 belonging to the petitioner was notified and the award passed does not cover the Petrol pump and underground storage tank. It is further stated that after publication of notification and declaration, the date of award enquiry was fixed on 17.09.2005, that as hearing could not be held on that day due to Ganesh Nimmajanam, the enquiry was adjourned to 20.09.2005 by

giving wide publicity by beat of Tom Tom on 16.09.2005 in the village by the Village Secretary of Thondupally village. On 20.09.2005, the land owners of the lands in Survey Nos.13, 15, 31, 32, 34, 35 and 38 appeared and filed their statements along with necessary documents claiming compensation. It is alleged that petitioner's son appeared on 19.09.2005 and asked for award enquiry and resurvey, and the LAO informed that enquiry will be conducted on 20.09.2005 at MRO's Office, Shamshabad. It is also alleged that petitioner's son filed documents of title but did not give any statement of objections. It is further alleged that the LAO has seen the petitioner's son on 20.09.2005 at MRO's Office, Shamshabad but he did not give any statement.

In the counter affidavit filed in W.P.No.22610 of 2005, the LAO made a categorical statement that in the impugned notification only an extent of 9 ½ guntas of land is notified for acquisition for ORR. In para 5 of the counter affidavit, a reference is made to the notification dated 05.01.2004 under Section 4(1) of the Act and declaration dated 07.01.2004 of the Act issued by Revenue Divisional Officer, Chevella for formation of National Highway-7, in which, part of the land in Survey No.37 was proposed for acquisition over an extent of Acs.1.6 guntas of land and award was passed on 18.06.2004 and that as there was a dispute regarding compensation, the matter was referred to civil Court under Sections 30 and 31 of the Act. Insofar as the letter dated 26.09.2005 addressed by the LAO to the Territory Manager, Bharat Petroleum Corporation Limited, it is alleged that the said letter was addressed on request of the petitioner in view of the future acquisition and for taking time for shifting the Petrol pump from the competent authority and that the letter may not be acted upon in view of the award passed on 01.10.2005 to the extent of 9 ½ guntas of land, which excludes Petrol pump, office room and underground storage tank insofar as the present impugned acquisition is concerned. The petitioner filed reply affidavit in W.P.No.22449 of 2005 but no reply affidavit is filed in W.P.No.22610 of 2005.

The learned Senior Counsel for the petitioners, Sri K.Pratap Reddy, submits that as per the scheme of the Act, the exact land, which is to be acquired by issue of notification under Section 4(1) of the Act has to be measured before initiating proposals for acquisition. The same was not done. This is in gross violation of Sections 8 and 9 of the Act. If the land, which is sought to be acquired from the petitioner, is not clearly delineated, and such action is taken by the LAO after passing the award, the same would amount to denial of a valuable right under Section 9(2) of the Act rendering the award itself illegal. Secondly, he would urge that the award enquiry was postponed on 17.09.2005 on account of public holiday and therefore the petitioner filed documents on 26.09.2005. The LAO passed award on 01.10.2005 without considering the documents filed by the petitioner.

The learned Special Counsel for Project Director, ORR, Sri P.Rajagopala Rao, has produced the relevant file before this Court in support of the counter averments. He would submit that if there is any proposal by National Highways Authority or any other public authority for acquisition of land of the petitioner in future, the same does not in any manner affect the present acquisition for ORR. According to the learned counsel, what is acquired is only 9 ½ guntas of

land and therefore the letter dated 26.09.2005 issued by the LAO to Territory Manager is not being acted upon. Secondly, he would submit that as the enquiry on 17.09.2005 was postponed due to public holiday, on 16.09.2005 itself the LAO gave wide publicity by beat of Tom Tom, and after doing so, the Panchayat Secretary, Thondupally sent a communication to the LAO. Pursuant to such Tom Tom, all other land owners appeared and filed statements along with necessary documents when the enquiry was conducted on 20.09.2005. Therefore, the procedure was strictly followed. Lastly, he would urge that even before the proposals were submitted for acquisition, proper subdivision plans/sketches were prepared showing 9 ½ guntas of land, which was also mentioned in the declaration under Section 6 of the Act. Therefore, there is no violation of Sections 8 and 9(2) of the Act.

The first question, which requires to be considered, is whether there was proper delineation of 9 ½ guntas of land by the authorities. A perusal of the file would show that even before the proposals were submitted to the Government for issue of notification under Section 4(1) of the Act, the subordinate staff inspected the area and prepared plans for each survey number showing the land required for ORR in each survey number. The declaration issued under Section 6 of the Act also makes a reference to this. The declaration under Section 6 reads as under.

FORM 5-A

DRAFT DECLARATION UNDER SECTION 6 OF THE
LAND ACQUISITION ACT

Under section 6 of the Land Acquisition Act the Government of the Andhra Pradesh hereby declare that the land specified in the schedule below situated at Thondupally village and Shamshabad Mandal, Ranga Reddy District admeasuring Ac.10-19 ½ Gts. be the same a little more or less, is needed for a public purpose to wit for formation of Outer Ring Road at Thondupally village. Under section 3 and 7 of the Act, the Special Deputy Collector, Land Acquisition, Unit-I, Outer Ring Road Project, HUDA, Tarnaka, Hyderabad is appointed to perform the functions of the Collector under the Act and directed to take order for the Acquisition of the said land. Under sub-section (1) and (2) of Section 17 of the Act, the Governor of Andhra Pradesh further directs that the possession of the said land may be taken on the expiry of 15 days from the date of the publication of the notice mentioned in section 91(1) of the Act. **A plan of the land is kept in the office of the Special Deputy Collector, Land Acquisition, Unit-I, ORR, HUDA, Tarnaka, Hyderabad and may be inspected at any time during office hours.**

(emphasis supplied)

THE SCHEDULE

1. District:Ranga Reddy 2. Mandal: Shamshabad 3.Village:Tondupally

Sy.No.	Classification Dry/Wet	Patta Inam	Name of the Pattadar/Occupant Sarvasri	Extent Ac. Gts	Structures
All other survey numbers are omitted as not necessary for the purpose of this case					
37	Dry	Inam	Smt.Amitha HedaW/o Nandu KishoreSrinivas BangS/o Madan Gopal	0.09 ½	Compound WallNeem Trees (4)

In view of the above, actually and factually the submission of the learned Senior Counsel cannot be sustained. Assuming that in a given case, the land is not marked out and not measured, does it vitiate the entire land acquisition proceedings? Whether such requirement is mandatory? It would not be possible to hold that the award passed by the LAO would be illegal if there is no pre-marking and pre-measurement of the land acquired. At the stage of publication of notification under Section 4(1) of the Act, the law requires the Government to notify the intention to acquire the land for public purpose. After publication of the notification under Section 4(1) of the Act, it shall be lawful for any officer authorized by the Government to enter upon and survey the land and to do all other acts necessary to ascertain whether the land is suitable for the purpose. At this stage, it shall be open to the authorities to set out boundaries of the land proposed to be taken by placing marks. (See Section 4(2) of the Act). Indeed Section 4 appears in part II of the Act below a sub-heading "Preliminary Investigation". Then comes hearing of objections under Section 5-A, which again appears under sub-heading "Objections", which is followed by "Declaration of Intended Acquisition" under which Section 6 appears. At this stage, the Government is required to make a declaration that the particular land is needed. The Government has prescribed the standard forms of Notifications under the Act. This form, as an extracted above, requires the localization of the specific land which is to be acquired. For this reason, the declaration refers to the plan of the land, which is open for inspection by the persons interested. Under Section 8 of the Act, in all cases, there is no requirement of marking and measuring the land in every case. Section 8 reads as under.

> **8. Land to be marked out, measured and planned:-** The Collector shall thereupon cause the land **(unless it has been already marked out under Section 4)** to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.
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> (emphasis supplied)

A plain reading of the above provision would show that if the land has already been measured and marked as contemplated under Section 4(2) of the Act, and a plan is prepared which was kept for inspection as per the declaration under Section 6 of the

Act, there is no necessity to mark and measure the land. A person who received notice under Section 9(1) of the Act can raise objections as to the measurement during the award enquiry under Section 9(2) of the Act and also raise a dispute while seeking a reference under Section 18 of the Act. Be it noted, Section 18 enables a person interested to seek a reference to the civil Court in relation to the measurement of the land, the amount of compensation and apportionment of the compensation. The right of the person to raise objection insofar as the extent of the land acquired is therefore not lost by the completion of the award enquiry. Reading Sections 4(2), 6, 8, 9(2) and 18 of the Act, it is not possible to accept the submission of the learned Senior Counsel for the petitioner that non-compliance of provisions of Section 8 of the Act renders the award enquiry and the award illegal, cannot be accepted. In this case, after perusing the file, this Court holds that the procedure as contemplated under the Act was followed by the LAO and the same is unexceptionable.

The second question for consideration is whether the LAO has given proper notice while conducting award enquiry? There is no denial that the petitioner received notice under Section 9(1) and 10(3) of the Act. There is also no denial that the petitioner filed the documents on 26.09.2005. The petitioner only contends that after 17.09.2005, there was no further notice and therefore he assumes that no award enquiry is conducted. The file discloses that the Panchayat Secretary, Thondupally, Shamshabad Mandal, sent a letter to the LAO informing that on 16.09.2005 the publicity was given in the village by beat of Tom Tom informing that the award enquiry scheduled on 17.09.2005 is postponed to 20.09.2005. The file further discloses that on 20.09.2005, all other land owners appeared before the LAO and filed their claim statements along with necessary documents. Further in the counter affidavit filed by the LAO (in para 5 at page 3), an averment is made that the LAO has seen the petitioner's son at the Office of the MRO, Shamshabad, but he did not give the statement. Though a reply affidavit is filed, there is no specific denial of this counter averment and therefore it has to be presumed that this aspect of the matter stands admitted.

The third aspect of the matter is the area which is actually acquired under the award dated 01.10.2005. The learned Senior Counsel has placed before this Court a sketch plan showing the proposed acquisition. The same would show that as if the entire land occupied by Petrol pump is being acquired. The learned Special Counsel also placed before this Court another sketch plan and the relevant plans in the file to show that in the present impugned acquisition, only an extent of 9 ½ guntas of land in Survey No.37 is being acquired. Therefore, this Court only observes that while taking possession of the land, the LAO should see that only 9 ½ guntas of land is taken possession. Needless to observe that if any other extent of land is to be taken, there would have to be separate acquisition proceedings.

In the result, these writ petitions, with the above observations, are accordingly disposed of. No costs.

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(V.V.S.RAO,J)

02.11.2005.

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